

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1098 of 2017
& CMP.No.5314 of 2017

P.K.Palanisamy

... Petitioner

Vs.

1.State, Rep. by
The District Collector,
O/o. District Collector,
Erode District, Erode.

2.The Commissioner
Kodumudi Panchayat Union,
Kodumudi, Erode District.

3.The Executive Officer,
Unjalur Town Panchayat,
Unjalur,
Erode District.

.. Respondents

Prayer : Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 09.11.2016 passed by the learned District Munsif cum Judicial Magistrate Court, Kodumudi in I.A.No.134 of 2016 in O.S.No.237 of 2014 and allow this Civil Revision Petition.

For Petitioner : Mr.K.Soundararajan
For Respondents : Mr.K.Karthikeyan [for R2 & R3]
R1 - No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 09.11.2016 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in I.A.No.134 of 2016 in O.S.No.237 of 2014.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.237 of 2014 on the file of District Munsif Court, Kodumudi. The petitioner filed the suit for permanent injunction restraining the respondents from laying tar road in the suit cart track. The respondents filed written statement on 17.03.2015, and stated that the tar road was laid long back and it was re-laid on number of occasions, and the general public are in use of the same.

2.1. The petitioner filed an application in I.A.No.134 of 2016 for appointment of Advocate Commissioner to inspect the suit property and measure the same with the help of the Surveyor and to file a report. According to the petitioner, the land in question is a patta land and it belongs to him. The respondents without the knowledge of the petitioner had illegally acquired the property and laid the tar road. Hence, the respondents are liable to pay

compensation to the petitioner for the lands that was acquired by them. In order to claim compensation, it is necessary to file a petition for amendment of plaint, and in the said circumstances, Advocate Commissioner need to be appointed to demarcate the cart-track measurements, in which the respondents had laid the road.

3. The respondents filed counter and opposed the same on the ground that the petitioner has not filed any documents to prove his title, and only based on the patta, title of the property cannot be decided. The respondent further submitted that due to enmity towards his relatives and villagers, the petitioner has filed the suit. The learned Judge placing reliance on the judgment of the Hon'ble Supreme Court in ***R.Justin Arulappa Vs. K.Xavier Arulappa*** reported in **[2010 (1) (MLJ) 1179]** and taking into consideration the fact that in a suit for permanent injunction, Advocate Commissioner cannot be appointed on the ground that the petitioner is making arrangements for claiming compensation from the respondents, had dismissed the application I.A.No.134 of 2016 vide order dated 9.11.2016.

4. Against the said order of dismissal dated 9.11.2016 passed in I.A.No.134 of 2016 by the learned District Munsif cum Judicial Magistrate, Kodumudi, the petitioner has filed the present Civil Revision Petition.

5. Heard Mr.K.Soundarajan, the learned counsel appearing for the petitioner and Mr.K.Karthikeyan, the learned counsel appearing for respondents 2 and 3, and perused the materials available on record.

6. From the materials available on record, it is seen that the learned Judge has considered all the facts and dismissed the application holding that in the present case, the petitioner is seeking amendment of the plaint only on the ground to claim compensation from the respondents, and in the said case, appointment of Advocate Commissioner to demarcate the suit property is not permissible. Moreover, in a suit for permanent injunction, it is the petitioner/plaintiff who has to prove his case with acceptable evidences. In the said circumstances, the trial Court has held that the application filed by the petitioner seeking appointment of Advocate Commissioner is not necessary, and dismissed the

application. The learned District Munsif-cum-Judicial Magistrate, Kodumudi has exercised his power vested on him properly. There is no irregularity or illegality in the order 09.11.2016 passed the learned Judge in I.A.No.134 of 2016 in O.S.No.237 of 2014, warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

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Speaking order/Non-speaking order
Internet : Yes / No
Index : Yes / No

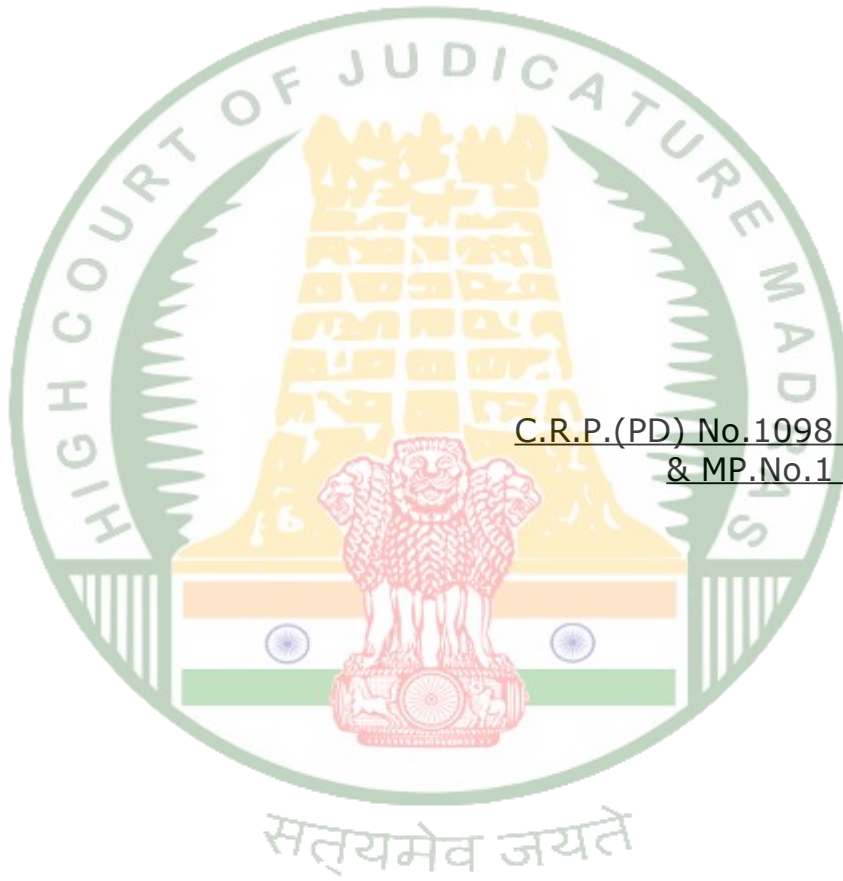
To:

The District-cum-Judicial Magistrate
Kodumudi.

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V.M.VELUMANI, J

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